Report to the Auburn City Council

Action Item
Agenda Item No. 15

City Manager's Approval

To:	Mayor and City Council Members
From:	Bob Richardson, City Manager
	Michael G. Colantuono, City Attorney
Date:	June 28, 2010
Subject:	Pros and Cons of Adopting a City Charter

The Issue

The Council has requested that staff gather and provide information regarding the pros and cons of adopting a City charter, information about the process to do so, and regarding the differences between the powers and legal status of charter and general law cities. Attached are a detailed memo prepared by the City Attorney detailing these issues as well as a paper presented in 2003 by a retired City Attorney and the retired City Manager of the charter City of Pasadena covering this same ground in a more general way.

Conclusions and Recommendation

Staff recommends the Council review this information and provide any direction to staff as to whether and how to further pursue the idea of adopting a charter for the City of Auburn. If the Council does wish to pursue that approach, the Council might appoint an advisory committee to develop a charter proposal for Council review or the Council might take on that task itself. Staff does not recommend the election of a formal charter commission with direct power to place a charter proposal before the voters because of the cost, delay and complexity that process entails.

Fiscal Implications

Additional legal support from the City Attorney's office will be required to assist with the development and drafting of a charter proposal and additional staff time will be required to support the work of an advisory committee or the Council itself in this work. A charter is adopted by the voters, so there will an election cost as well, but that will depend on whether the issue is presented at a regular, special, consolidated or stand-alone election. Generally, consolidating with another election (such as the March, June and November 2011 elections) will be less costly than a stand-alone election. Staff can provide more information on these fiscal impacts after the Council determines whether and how to pursue this idea.

Alternatives

The options available to the City Council are:

1. Take no action, retaining the City's general law status.
2. Appoint an advisory committee to prepare a charter proposal for Council consideration and, ultimately, voter approval.
3. Schedule workshop meetings of the City Council to prepare a charter proposal.
4. Pursue the election of a Charter Commission with power to place a charter proposal on the ballot without further involvement of the City Council. Given the cost and delay of this process – it requires two elections (one to elect the Charter Commissioners and one to consider the Commission's proposal for a City charter) and probably two years or more to accomplish. The elected charter commission process in Los Angeles ultimately led to two competing charter proposals and ample political and legal complexity.

Discussion

The City, like the majority of California cities, is a general law city – it derives its powers via general laws adopted by the State Legislature. Accordingly, it is governed by the policy preferences of the Legislature on many issues, has only the power the Legislature chooses to grant (although the home rule tradition in California gives the City wide police power and, subject to voter approval, taxing power), but benefits from the Legislature's continual update of laws to address new subjects and to revisit old subjects in light of new information, events and concerns.

A growing minority of California cities are charter cities – 118 out of 481 according to the League of California Cities. All of California's largest cities and many smaller cities are governed by a city charter. Locally, the Cities of Roseville and Grass Valley are charter cities. All other cities in Nevada, Placer and El Dorado Counties are general law cities. A complete list of charter cities compiled by the League of California Cities is found online at http://www.cacities.org/index.jsp?zone=locc&previewStory=20452.

A charter city derives its power directly from the State Constitution, subject to only two limitations – any limits stated in the local voter-approved charter and any State legislation on subjects the courts deem to be "matters of statewide concern" rather than "municipal affairs." These two concepts are more labels for conclusions than outlines of rationales for deciding future cases. For a more complete discussion of what constitutes a "municipal affair" and what is subject to State legislation as a "matter of statewide concern," please see the two attachments to this memo.

It is important to note that a **county** charter has very different legal significance that a city charter. Counties are arms of state government used to deliver state services rather than independent local governments (for example, vacancies on the County Board of Supervisors are filled by the Governor). Thus, a county charter is competent only to alter the structure of government, determining which department head positions will be combined, which elected, and the like.

Some of the advantages of being a charter city are the increased authority of the city government to legislate on matters of concern to local residents and freedom from intrusive State legislation

that may not reflect the needs and values specific to this community. For example, recent charters have been adopted to gain local power to:

(i) avoid the application of prevailing wage requirements for locally funded public works projects,
(ii) attempt to protect authority to regulate mobilehome rents in the face of hostile State legislation,
(iii) protect some measure of local fiscal autonomy, and
(iv) to alter the structure of local government to meet the needs of a community. Sacramento is currently involved in a highly visible discussion of whether to convert from a Council-Manager form of government to a strong-executive-mayor form of government.

The advantages of adopting a charter are more fully stated in the attachments to this memo.

Some of the disadvantages of adopting a charter are these:

(i) Prevailing wage authority is more limited than it might appear and has downsides: prevailing wages can be made inapplicable only to locally funded charter city public works projects, such as improvements to the City's sewer system funded from local rates. However, any project that involves federal, state or redevelopment funds of the Auburn Urban Development Authority will remain subject to prevailing wage requirements and this will cover most street projects. Moreover, Monterey found that a non-prevailing wage environment led to inexperienced and underfunded contractors winning contracts for certain projects. Monterey addressed that problem by imposing a local prevailing wage requirement for more complex projects.

(ii) A charter can be amended by local initiative signed by just 15% of the City electorate. This can lead to special interest proposals, like the labor relations and wage-protection measures common in many Bay Area city charters such as the binding arbitration provision that contributed to the bankruptcy of the City of Vallejo and which its voters narrowly repealed in the June 2010 election. Auburn could see proposals on a variety of subjects that reflect the community's politics, the desires of political candidates and parties to emphasize certain issues in the effort to gain attention and advance their careers and causes, and temporary controversies. It is sometimes easier to adopt a charter amendment than to fix or repeal it later when its restrictions prove problematic. As an example, consider the recent controversy in the City regarding regulation of potentially dangerous dogs. If 15% of the registered voters of the City could propose an amendment to the basic operating rules of the City, we could well see competing proposals from those who advocate for animals and those who believe large, dangerous dogs should be more closely regulated. Such proposals could be energized by funds and volunteers from outside the City. These are, of course, policy issues and what we describe here as risks and disadvantages might be seen by others as valuable flexibility to empower the citizens of Auburn to engage in the process of government.

(iii) Becoming a charter city, and being a charter city, involve some costs. First is the need to draft a charter proposal and place it before the voters. In addition, the City will not automatically gain the benefit of changes in State law and will need to make the effort to update its own legislation. Review of the Auburn Municipal Code reveals that we do not do that as often or as thoroughly as we might wish because of limited resources. Much of what makes the City Code outdated, however, is not problematic given updates in State law. Charter cities do not have that luxury. To cite one example, the State legislature changed the date of the Presidential primary election held every four years. Cities that wish to consolidate their local elections with that date could rely on State legislation to do so by ordinance only if they are general law cities. Charter cities require a voter-approved charter amendment. This has meant free-standing, more expensive elections with lower turnouts in such charter cities as Long Beach. In another example, the City of Grass Valley retains what many consider an outdated City Administrator form of government (in which department heads are appointed by and report to the Council rather than a manager) not because its leaders view that as good policy, but because it has been unwilling to take on the political challenge of explaining the need for the change to the City's voters. Some believe this affected the City's ability to recruit a new Administrator because many qualified candidates were unwilling to manage a staff that does not report to them.

When the Council last discussed this issue, it asked us to report on whether any charter cities had repealed their charters and reverted to general law city status. We have researched the matter and identified no cities which have done so.

Conclusion

These are all, of course, matters of policy committed to the sound judgment of the Council. We develop these pros and cons in this staff report and in the attached memo to assist your discussion of these issues. Staff will be happy to implement whatever direction the Council provides on this subject. If we can provide further information, please let us know.

Attachments: June 22, 2010 Memo from City Attorney
May 30, 2003 Paper from Conference of the California Contract Cities Ass'n

CITY OF AUBURN
OFFICE OF THE CITY ATTORNEY
M E M O R A N D U M

TO: Mayor Powers and Members of the City Council

FROM: Michael G. Colantuono, City Attorney

DATE: June 22, 2010

SUBJECT: Advantages and Disadvantages of Becoming a Charter City

As you requested, I write to analyze the advantages and disadvantages to a general law city, such as Auburn, of adopting a charter. This memorandum provides a broad overview of the differences in the authority of general law and charter cities. It concludes with a brief summary of the procedures by which a charter may be adopted.

Unlike a general law city, a charter city is generally not subject to the general laws of the State of California with respect to its municipal affairs. As a charter city, it could adopt charter provisions and ordinances concerning its own municipal affairs unconstrained by general laws on the subject. While we do not discuss in this memorandum every area in which a charter city is able to legislate without regard to the general laws, among the more important are:

- T municipal elections;
- T municipal initiative, referendum and recall;
- T procedures for the adoption of ordinances;
- T compensation for city officers and employees;
- T public works contracts (both bidding procedures and, under current law, prevailing wages);
- T public finance, taxes and use of public funds;
- T utility franchises.

Each of these topics is discussed in more detail below.

General

Charter cities derive their powers directly from the California Constitution. Section 3(a) of Article 11 of the California Constitution provides in part:

> "The provisions of a charter are the law of the State and have the force and effect of legislative enactments."

Section 5(a) of Article 11 provides:

> "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution . . . with respect to municipal affairs shall supersede all laws inconsistent therewith."

The courts have held that this provision grants charter cities supreme authority over "municipal affairs." *See Bishop v. City of San Jose*, 1 Cal.3d 56, 61 (1969). Of course, even the actions of a charter city concerning municipal affairs are subject to constitutional limitations, such as the obligation to provide due process and equal protection of the laws. See *Wilson v. Los Angeles*, 54 Cal.2d 61 (1960). Thus, as a charter city, could exercise plenary authority over its municipal affairs free from statutory constraints, subject only to constitutional limitations.

Whether a particular subject is a "municipal affair," over which the municipality has full authority, or is a matter of "statewide concern" over which the Legislature has authority, is a matter for the courts to decide, although the Legislature's intention will be given great weight. See *Bishop*, 1 Cal.3d at 63; see also *Baggett v. Gates*, 32 Cal.3d 128, 136 (1982).

The California courts have distinguished "municipal affairs" from matters of "statewide concern" in various ways. Municipal affairs have been said to "refer to the internal business affairs of a municipality." *Fragley v. Phelan*, 126 Cal. 383, 387 (1899) (Garoutte, J., concurring). The term has been said to "include all powers appropriate for a municipality to possess." *Ex Parte Braun*, 141 Cal. 204, 209 (1903).

But none of the rules articulated by the courts is particularly helpful in determining whether a particular subject is a municipal affair or of statewide concern. As the Supreme Court put it in one of its more recent pronouncements on the subject:

> "The idea that the content of 'municipal affairs' is indefinite in its essentials is one that has taken root in our cases on the subject. We have said that the task of determining whether a given activity is a 'municipal affair' or one of statewide concern is an ad hoc inquiry; that 'the constitutional concept of municipal affairs is not a fixed or static quantity' and that the question 'must be answered in light of the facts and circumstances surrounding each case'. 'No exact definition of the term 'municipal affairs' can be formulated and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case.'"

California Fed'l Savings & Loan Ass'n v. City of Los Angeles, 54 Cal.3d 1, 16 (1991) ("*Cal. Fed.*") (citations omitted).

However, over the years, the courts have determined that certain subjects are municipal affairs about which charter cities are free to legislate, and that others are matters of statewide concern. Although this listing is not exhaustive, the following matters have been held to be of general or statewide concern, **over which the Legislature has full authority**:

- certain aspects of the school system (*Town of Atherton v. Superior Court*, 159 Cal.App.2d 417, 421 (1958));
- regulation of traffic (*Pipoly v. Benson*, 20 Cal.2d 366, 369 (1942));
- telephone franchises (*Pac. Tel. & Tel. Co. v. City of Los Angeles*, 44 Cal.2d 272, 279 (1955));
- licensing members of a trade or profession (*City and County of San Francisco v. Boss*, 83 Cal.App.2d 445 (1948) (painting contractors), *Baron v. City of Los Angeles*, 2 Cal.3d 535, 540-41 (1970) (attorneys));
- municipal responsibility for injury to the person and property of others (*Eastlick v. City of Los Angeles*, 29 Cal.2d 661 (1947)).

The Ralph M. Brown Act, Government Code §§ 54950 et seq., our local government open meeting law, has been held to be a matter of statewide concern. *San Diego Union v. City Council*, 146 Cal.App.3d 947 (1983). The exercise of the power of eminent domain is also considered a matter of statewide concern. *Wilson v. Beville*, 47 Cal.2d 852, 859 (1957). Accordingly, the adoption of a charter would generally not affect these or other matters held to be of statewide concern.

The following is a partial list of matters which the courts have declared to involve municipal affairs **over which charter cities have full authority**:

- municipal elections (*Mackey v. Thiel*, 262 Cal.App.2d 362 (1968)) and recall (*Scheafer v. Herman*, 172 Cal. 338, 340 (1916));[1]
- the method for enactment of local ordinances (*Brougher v. Board of Public Works*, 205 Cal. 426 (1928));

[1] It is common for city charters to incorporate general laws governing elections so that many charter cities use the same rules as general law cities for election matters. This is the approach taken by the very short charters recently adopted by the City of Vista and others.

- T zoning (*City of Los Angeles v. California Department of Health*, 63 Cal.App.3d 473, 479 (1976));
- T municipal contracting procedures (*Loop Lumber Co. v. Van Loben Sels*, 173 Cal. 228 (1916));
- T the regulation of a city police force (Cal. Const. Article XI, § 5(b)(1));
- T the appointment, compensation, and removal of city employees (Cal. Const. Article XI, § 5);
- T the procedure for issuance of municipal bonds (*City of Santa Monica v. Grubb*, 245 Cal.App.2d 718 (1966));
- T the provision of financial assistance to public schools (*Berkeley Unified School District v. City of Berkeley*, 141 Cal.App.2d 841, 846-47 (1956), *Madsen v. Oakland Unified School District*, 45 Cal.App.3d 574, 579 (1975));
- T the procedure for issuance of building permits (*Lindell Co. v. Board of Permit Appeals*, 23 Cal.2d 303 (1943);
- T the acquisition and establishment of municipal parks (*Reagan v. City of Sausalito*, 210 Cal.App.2d 618 (1962);
- T designation of a public park as a site for a fire station (*Wiley v. City of Berkeley*, 136 Cal.App.2d 10 (1955);
- T establishment of public markets (*Bank v. Bell*, 62 Cal.App. 320 (1923);
- T improvement of streets (*City of San Jose v. Lynch*, 4 Cal.2d 760 (1935);
- T establishment and maintenance of sewers and drains (*Cramer v. City of San Diego*, 164 Cal.App.2d 168 (1958));
- T operation of a municipally owned utility (*Blum v. City and County of San Francisco*, 200 Cal.App.2d 639 (1962);
- T creation of a board of health for municipal employees (*Butterworth v. Boyd*, 12 Cal.2d 140 (1938).

Municipal Elections

Article 11, § 5(b) of the California Constitution provides:

> "plenary authority is hereby granted . . . to provide . . . [in a charter] or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal . . . ."

California courts have uniformly applied this section to conclude that the conduct of municipal elections is a municipal affair subject to local control. Thus the general election statutes apply to local elections in charter cities only to the extent the charter of the city so provides. See, e.g., *Mackey v. Thiel*, 262 Cal.App.2d 362 (1968) (mailing of candidate qualifications pamphlets); *Rees v. Layton*, 6 Cal.App.3d 815 (1970) (identification of candidates on ballot).

However, to avoid feeding suspicion that a charter proposal is "a political power grab," many newly chartered cities have – at least initially – adopted the elections laws that applied to them as general law cities.

Initiative, Referendum, and Recall

Article 4, § 1 of the California Constitution provides that "the people reserve to themselves the powers of initiative and referendum." Article 2, § 11 provides that:

> "Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. This section does not affect a city having a charter."

Thus a charter may provide any procedures for the exercise of the powers of initiative and referendum which do not interfere with the exercise those rights. See, e.g., *Atlas Hotels, Inc. v. Acker*, 230 Cal.App.2d 658 (1964); *Lawing v. Faull*, 227 Cal.App.2d 23, 29 (1964). The *Lawing* court explained as follows:

> "[W]ho best can determine what will provide most effectively a fine balance between the legislative powers delegated to the elective representatives of a city, on the one hand, and initiative and referendum powers reserved to the people of such city on the other? Certainly, it is the people of the particular cities involved who are familiar with local conditions who are best able to regulate such matters either by means of charter provisions . . . or by ordinance . . . ." *Id.*

It has also been held that

> "the subject of the removal of officers of a city and county, by means of a recall, when provided for in a special charter, is a municipal affair, within the meaning [of the State Constitution], and that, consequently, it is not subject to or controlled by general laws inconsistent therewith."

Scheafer v. Herman, 172 Cal. 338, 340 (1916).

For reasons similar to those regarding election laws, many city charters provide that initiative, referendum, and recall are governed by the general laws. However, it is possible for a charter to provide the powers of initiative, referendum and recall more broadly than would apply to a general law city. *E.g., Rossi v. Brown*, 9 Cal.4th 688 (1995) (San Francisco charter permitted referendum on a tax measure that would be prohibited by Article II, § 9(a) of the California Constitution in a general law city).

Method of Enacting an Ordinance

It is well established that the manner of enacting ordinances is a municipal affair. In *Brougher v. Board of Public Works*, 205 Cal. 426 (1928), the plaintiffs argued a zoning ordinance was invalid because the City of San Francisco failed to follow procedures prescribed by state law for the adoption of such ordinances. The court rejected this argument, stating "[i]t has repeatedly been held by this court that the manner of enacting municipal ordinances is a municipal affair." *Id.* at 438.

Compensation of Officers and Employees

Article 11, § 5(b) of the California Constitution, quoted in part above, also provides that charter cities have "plenary authority" to provide "for [the] compensation" of their officers and employees. The courts have enforced this provision and extended it to pension benefits. *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal.3d 296 (1979).

Therefore, charter cities are not, for example, subject to the limitations on the salaries of city councilmembers contained in Government Code § 36516 unless they choose to be. But while the compensation of city employees is a "municipal affair," labor relations between public entities and their employees are not; and the Meyers-Milias-Brown Act applies to charter cities. *San Leandro Police Officers Ass'n v. City of San Leandro*, 55 Cal.App.3d 553 (1976).

Public Works Contracts

The courts have held that the construction of public works is a municipal affair. Therefore, statutory public bidding requirements do not generally apply to charter cities. In *Smith v. City of Riverside*, 34 Cal.App.3d 529 (1973), the city awarded a contract for the construction of a public works project without seeking competitive bids, under authority granted

by its charter. The court concluded "the construction of city water and electrical facilities is a municipal affair." *Id.* at 534. Similar results were reached in *Piledrivers' Local Union v. City of Santa Monica*, 151 Cal.App.3d 509 (1984), and *R & A Vending Services, Inc. v. City of Los Angeles*, 172 Cal.App.3d 1188 (1985).

The Court of Appeal ruled in 2009 that the City of Vista might properly exempt locally funded public works projects from state prevailing wage requirements, although projects funded with state and federal funds remain subject to state and federal prevailing wage requirements, respectively. The unions which challenged Vista on this point obtained review in the California Supreme Court and the case remains pending there. It was fully briefed in February of this year and has not yet been set for argument. *State Building & Construction Trades Council of California, AFL-CIO v. City of Vista*, 93 Cal.Rptr.3d 95, *review granted*, 99 Cal.Rptr. 559 (2009), California Supreme Court Case No. S173586.

Therefore, a charter may authorize construction of public works by city forces, pursuant to negotiated contracts, or by other means not permitted by the Public Contract Code. This rule also applies to prevailing wage law, but charter cities may be come subject to state law requiring payment of prevailing wages depending on the outcome of the *Vista* case.

Public Finances

A charter city may finance public improvements without complying with certain provisions of state law. In *City of Santa Monica v. Grubb*, 245 Cal.App.2d 718 (1966), Santa Monica, a charter city, enacted a procedural ordinance which incorporated the provisions of the Revenue Bond Law of 1941, excluding those which required approval of the bonds by a majority of the voters. The court held that the Santa Monica charter properly adopted only portions of the Revenue Bond Law of 1941 and ruled for the City.

General law cities may also exercise authority under the Improvement Act of 1911 or the Municipal Improvement Act of 1913 to finance public improvements through the levy and collection of special assessments. Charter cities, however, need not follow those procedures. In *J.W. Jones Cos. v. City of San Diego*, 157 Cal.App.3d 745 (1984), the court held that the charter city of San Diego was empowered to finance public improvements through assessment proceedings provided for by ordinance without complying with the 1911 Act or the 1913 Act.

Taxes

A charter city may impose taxes for municipal purposes regardless of conflicting state statutes. This power is subject, however, to constitution limits such as Article XIII A of the California Constitution (Proposition 13) and Articles XIII C and XIII D (Proposition 218). This power has been of reduced significance since the enactment in 1982 of Government Code § 37101.5, which provides:

> "Except as provided in Section 7282 of the Revenue and Taxation Code,[2/] the legislative body of any city may levy any tax which may be levied by any charter city, subject to the voters' approval pursuant to Article XIII A of the Constitution of California."

However, what the Legislature gives, it may take away. Moreover, because they are exempt from Proposition 62, charter cities may adopt documentary transfer taxes on real estate transactions in amounts greater than state law allows general law cities. *Fisher v. City of Alameda*, 20 Cal.App.4th 120 (1993); *Fielder v. City of Los Angeles*, 14 Cal.App.4th 137 (1993).

Gifts of Public Funds

Article 16, § 6 of the California Constitution provides: "The Legislature shall have no power to . . . make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever." The courts have repeatedly held that this section does not apply to charter cities, reasoning as follows:

> "This provision of the constitution is in the article regulating the powers of the legislative department of the state government and is a limitation on the power of the state legislature. The powers of the city of Los Angeles are not derived from the legislature but from a freeholders' charter directly provided for by the constitution."

Tevis v. City & County of San Francisco, 43 Cal.2d 190, 197 (1954) (quoting *Los Angeles Gas & Elec. Corp. v. City of Los Angeles*, 188 Cal. 307 (1922)).

The courts have rejected challenges to expenditures by charter cities concerning their municipal employees on the ground that the prohibition on gifts of public funds does not apply to charter cities. In *Tevis*, the court upheld the retroactive application of a charter amendment authorizing payments for accrued vacation to certain public employees, and rejected a claim the measure was an invalid gift of public funds. In *Social Workers Union, Local 535 v. County of Los Angeles*, 270 Cal.App.2d 65 (1969), the court upheld a bonus awarded to employees who had not participated in a strike.

By contrast, similar expenditures by general law cities have been invalidated as gifts of public funds. In *Albright v. City of South San Francisco*, 44 Cal.App.3d 866 (1975), for example, the court held that a flat expense allowance was a gift of public funds to the extent it exceeded amounts actually spent by the mayor and members of the city council.

2/ The cited section of the Revenue and Taxation Code forbids cities and counties to "levy a tax on the privilege of occupying a campsite in a unit of the state park system."

The courts have also held that contributions to charitable or civic organizations by a general law city violate the constitutional prohibition of gifts of public funds. See *Patty v. Colgan*, 97 Cal. 251 (1893) (charitable contribution to flood victims). Such restrictions would not apply to charter cities.

The inapplicability of the constitutional provision to charter cities does not authorize them to spend irresponsibly; charter city expenditures should be for a public purpose. But exemption from the constitutional prohibition against gifts of public funds gives charter cities more flexibility than general law cities with respect to expenditures of public monies.

Utility Franchises

A charter city has broad power to grant and regulate franchises for the use of city streets for light, water, power, heat, transportation or communications services. Article 11, § 9 of the California Constitution provides:

> "(a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.
>
> (b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law."

The power conferred by this section is limited by statute as to general law cities, but not as to charter cities. Public Utilities Code §§ 6201-6302 authorize general law cities to grant franchises, but impose restrictions on local regulations of franchisees. This statute does not apply to cities with charters that authorize the granting of franchises. Section 6205 states:

> "This chapter does not apply to any municipality having a free-holders' charter adopted and ratified under the Constitution and having in such charter provisions for the issuance of franchises by the municipality, but nothing contained in this chapter shall restrict the right of any such chartered municipality to avail itself of the provisions of this chapter wherever it may lawfully do so. The provisions of this charter relating to the payment of a percentage of gross receipts shall not be construed as a declaration of legislative judgment as to the proper compensation to be paid a chartered municipality for the right to exercise franchise privileges therein."

The City could provide in a charter for its own franchise procedures and could structure its own formula or method for compensation. The charges imposed must, of course, meet the

constitutional standards of due process and equal protection, but may exceed the limit imposed by the statute. Moreover, the City may not disregard the contract rights of holders of existing franchises. Such a charter provision could also provide broad power to regulate franchisees not available to general law cities.

Disadvantages of a Charter

Considerations which may weigh against the adoption of a charter include:

(1) Drafting a charter will require time, effort, and expense.

(2) City officials, staff, and the public will be required to adjust to changes effected by a charter after years of operation under the general law.

(3) The uncertainty that may arise on occasion as to whether a specific matter is one of municipal concern governed by the charter, or of state-wide concern, governed by statute. This could give rise to a legal test if an issue should arise in a "gray" area when the charter and general law may differ. Of course, if the City is willing to comply with the general law provisions in the event of conflicts, this problem will arise only if the charter **requires** different action than permitted by general law.

(4) The City would not benefit from new state legislation on matters of municipal concern unless action is taken by the City to adopt it.

(5) Once adopted, the charter cannot be amended without the approval of the City's voters. Government Code § 34459, Elections Code § 4080.

(6) The charter may be amended by initiative and restrictions on the City may be imposed that the City would not impose. Such amendments could, for example, require term limits, mandate employee benefits, mandate compensation levels for City employees, etc.

Procedures for the Adoption of a Charter

The California Constitution provides that a city may adopt a charter by a majority vote of its voters. Cal. Const. art. XI, § 3(a). A charter may be proposed for the approval of the electorate of the City by a charter commission or by the City Council. Government Code §§ 34451, 34458. An amendment or repeal of a charter may be proposed by the governing body or by initiative. The governing body's consent is not necessary in the case of an initiative. *Birkenfeld v. City of Berkeley,* 17 Cal.3d 129 (1976); see Election Code § 9255.

Under the simpler of the two procedures, the City Council may itself prepare, or direct the preparation of, a charter and submit it to the voters of the City for approval. Government

Code § 34460. Such a charter becomes effective when approved by the voters and filed with the Secretary of State. Government Code §§ 34459, 34461.

Alternatively,

> "[a]n election for choosing charter commissioners may be called by a majority vote of the governing body of a city or city and county, or on presentation of a petition signed by not less than 15 percent of the registered voters of the city or city and county."

Government Code § 34452(a). At such an election, the voters are first asked "Shall a charter commission be elected to propose a new charter?" Government Code § 34453. Candidates for the charter commission appear on the same ballot. *Id.*

If the preparation of a charter is approved and a charter commission elected, the commission then has two years to propose a charter to the voters, which takes effect when approved by the voters and filed with the Secretary of State. Government Code §§ 34462, 34459, 34461.

Conclusion

The adoption of a charter can grant significant additional powers to the City, as discussed above. The process of preparing a charter may be commenced by the Council, which can direct the preparation of a charter or call an election to determine if the voters wish to elect a commission to prepare a charter. The process of preparing a charter may also be commenced by a petition signed by 15% of the City's voters directing the City to place on the ballot the question of whether a charter commission should be elected and to conduct an election of commissioners.

If the City desires to pursue the process of preparing a charter, or if we can provide any additional information, please let me know.

c: Bob Richardson, City Manager

GENERAL LAW CITY OR CHARTER CITY

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PREPARED FOR THE

44TH ANNUAL MUNICIPAL SEMINAR
CALIFORNIA CONTRACT CITIES ASSOCIATION

MAY 30, 2003

BY

PHILIP A. HAWKEY
EXECUTIVE VICE PRESIDENT
UNIVERSITY OF LA VERNE
FORMER CITY MANAGER OF PASADENA

AND

LELAND C. DOLLEY
OF
BURKE, WILLIAMS & SORENSEN, LLP

GENERAL LAW OR CHARTER CITY

AN OVERVIEW

I. EXECUTIVE SUMMARY

1. A charter city has the power to regulate "municipal affairs."

2. A general law city is subject to general laws passed by the State Legislature.

3. The definition of what constitutes a "municipal affair" is somewhat vague. The courts have considered, on a case by case basis, whether state law will prevail over laws adopted pursuant to a charter.

4. There has been a trend for general law cities to convert to charter cities. State legislation which threatens local control will likely continue the trend.

5. To adopt a charter, the City Council may propose a charter to the electorate at a general or special election.

II. DIFFERENCES BETWEEN CHARTER CITIES AND GENERAL LAW CITIES

There is a fundamental legal difference between general law cities and charter cities. General law cities are creatures of the legislature, and have only the powers that the State

Legislature, through the general laws of the State of California, gives them. (Coffineau v. Bu (1977) 68 Cal.App.3d 138, 142.) Charter cities, on the other hand, are separate creatures under State law. The charter adopted by a city actually constitutes State law, *with the force of* legislative enactments. (*San Francisco v. Workmen's Compens. Appeals Board* (1968) 267 Cal-App.2d 771, 773.)

Practically speaking, the import of the legal distinction between general law and charter cities is that the latter have more organic authority over their jurisdictions, and more flexibility in handling *their* affairs. Where there is a state regulatory scheme, a charter city is still free to regulate in the area so long as its regulations *are not in* conflict with the State's. (*Hunter v Adams* (1960) 180 Cal-App.2d 511,318.) The provisions of a city's charter are paramount on "municipal affairs," even as to conflicting provisions of State law. Additionally, a charter acts as a limitation rather than a grant of power. (*City and County of San Francisco v. Callanan* (1985) 169 Cal.,App .3d 643, 647.) Thus, restrictions on the exercise of a charter city's sovereign power must be "explicit" in the charter, and will not be implied. (*Id.* at p. 648.)

This precedence comes from Article XI, Section 5 of the California Constitution, which is described as follows:

> "Cities and towns hereafter organized under charters framed and adopted by authority of this constitution are hereby empowered . . . to make and enforce all laws and regulations in respect to municipal affairs, **subject only to the restrictions and limitations provided in their several charters,** and in respect

to other matters they shall be subject to and controlled by general laws." (*Id.*, emphasis added.)

Thus, as to "municipal affairs" charter cities are free from control by the State.

The problem, of course, is determining whether an area or issue constitutes a "municipal affair" or is rather of "statewide concern." Because of varied circumstances under which the question arises, courts purposely avoid any hard and fast *rule* of distinction. As stated in the leading case of California Savings and Loan Assoc. v. City of Los Angeles (1991) 54 Cal.3d 1, 16:

> "We have said that the task of determining whether a given activity is a "municipal affair" or one of statewide concern is an *ad hoc* inquiry; that "the constitutional concept of municipal affairs is not a fixed or static quality" ... and that the question "must be answered in light of the facts and circumstances surrounding each case" . . . "No exact definition of the term 'municipal affairs' can be formulated and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case." (*Id.*, citing, among other authorities, *Bishop v. City of San Jose* (1969) 1 Cal.3d 56.)

However, the *California Supreme* court put forth a two-part inquiry which courts have since used to determine whether an activity may be regulated as a municipal affair. (*Id.*, at pp.16-18.)

1. Initially, a court determines whether an "actual conflict' exists between a state statute and a charter city measure. (*Id.*, at p, 16.) If no actual conflict exists, the court will not decide whether the matter is a municipal affair, and the city charter provision will be upheld. (*Ibid.*)

2. If a conflict does exist, the court must decide whether the activity is one of statewide concern. (*Id.*, at p. 17.) If the subject of the statute is truly a statewide concern and the statute is "reasonably related to its resolution", the city charter measure is not a municipal affair. (*Id.*) If the subject of the statute is not one of statewide concern, the city charter measure is a "municipal affair" and beyond the reach of legislative enactment. (*Ibid.*)

In determining whether the issue is one of statewide concern, the court stated that "courts should avoid the error of 'compartmentalization,' that is, of cordoning off an entire area of governmental activity as either a municipal affair or one of statewide concern." (*Ibid.*) The concepts of what are considered municipal affairs or statewide concerns change with changing conditions. (*Ibid.*) An ultimate determination that an activity is one of statewide concern means "that under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city" and that the court has identified "a convincing basis for legislative action originating in extramunicipal [*sic*] concerns, one justifying legislative supersession [*sic*]

based on sensible, pragmatic considerations." (*Id.* at p. 18.) However, in the case of doubt as to a matter which has traditionally been considered strictly municipal, such doubt is decided in favor of the legislative authority of the state. (*Id.* at p. 24.)

Additionally, the legislature's expressed intent that an issue is a matter of statewide concern or its attempt to treat a particular subject on a statewide basis is not determinative. (*Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120, 128-129.)

Given such a fact-intensive test, it is therefore impossible to provide an exhaustive list of the areas in which charter cities have more authority, or more flexibility, than general law cities. The analysis that follows attempts to point out some of the more important distinctions, based on existing statutory provisions and case law.

III. "MUNICIPAL AFFAIRS" OVER WHICH CHARTER CITIES HAVE FULL CONTROL

The clearest instance of a "municipal affair" is a matter which pertains to the internal business affairs of the city. One line of authority goes so far as to define the term in this manner. (*City of Walnut Creek v. Silveria* (1957) 47 Cal.2d 804, 811.) Thus, a city's decisions to build a bridge, to provide new streets, to extend or widen other streets, all within its boundaries, constitute "municipal affairs." (*Id.* at 912.) A city's determination of the manner and method of exercising the initiative or referendum power is also a "municipal affair." (Lawing v. Faull (1964) 227 Cal.App.2d 23, 36.)

The determination of the wages paid to employees of charter cities is a matter of local concern. *(Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 317.) Other terms and conditions of employment of employees have also been deemed to be municipal affairs.

Courts are also clear that the provision and maintenance of parks is a "municipal affair." (*Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 211.) Similarly, the conduct of election of municipal officers falls within the exclusive authority of charter cities. (*District Election of Supervisors Committee For Five Percent (5%) v. O'Connor* (1978) 78 Cal.App.3d 261, 269.) This permits a charter city to dictate both the structuring and timing of election of municipal officers, which is more restrictively controlled for general law cities under the general law. Charter cities could impose term limits whereas general law cities could not prior to legislative action authorizing them to. (Polis v. City of La Palma (1992) 10 Cal.App.4th 25. 26.)

The imposition of a tax on the licensing and approval of a condominium conversion was upheld against a challenge that it conflicted with the Subdivision Map Act, because the tax was solely for revenue purposes, and was not a regulatory condition of approval. (*Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 659-660.) However, the court was not willing to declare that local taxation is a "municipal affair." (*Id.* at p. 664 n3.)

Charter cities also enjoy greater flexibility in public contracting for services. Payment for services rendered has historically been a municipal affair, and charter cities may adopt their own

payment procedures. Further, prevailing wage requirements are inapplicable to charter cities' public works contracts, so long as the public works are within the realm of municipal affairs, and not projects of state concern or funded by federal giants. (*Vial v. City of San Diego* (1981) 122 Cal. App. 3d 346, 348.)

Qualification requirements for city councilmembers set out in a charter must still conform to the Federal Constitution, however. Residency requirements in excess of a 30-day pre-filing deadline have been held unconstitutional. (*Johnson v. Hamilton* (1975) 15 Cal. 3d 461, 472.)

In fiscal matters, too, charter cities have more flexibility than general law cities. The plenary control over the form and function of city government permits the charter city to dictate requirements for an annual budget, fiscal reports, audits, etc. The general law provisions on these matters are somewhat hazy. In addition, Government Code Section 43120 permits a charter city to establish any dates it wishes for the fiscal year. A charter city can therefore set its fiscal year to begin two or three months after the general law date of July 1, and set its spending priorities after resolution of any budget gridlock in Sacramento, with full knowledge of State raids on local funding.

Another important power charter cities have is free rein in the imposition of franchise fees. The City of Long Beach, for example is a charter city and has imposed significant franchise fees that a general law city may not. Charter cities are not preempted by provisions of the Public Utilities Code in granting and charging franchise fees. (*Southern Pacific Pipelines, Inc. v. City of Long Beach* (1988) 204 Cal. App. 3d 660, 668-69.) In *Southern Pacific* the court stated:

Except in certain situations where the nature of utility service demonstrates it is a matter of statewide concern, the granting of franchises for the operation of utility structures on public streets has been regarded as a municipal affair with respect to its freeholder's charter cities may exercise home rule powers independent of state law. The city thus has its choice to use its own franchise granting procedures or those found in the Franchise Act of 1937 or in the Broughton Act. (*Id.*)

Telephone services are exempt from local franchise fees as a matter of statewide concern. (*Pacific Telephone and Telegraph Company v. City and County of San Francisco* (1959) 51 Cal.2d 766, 768.) Nevertheless, under "*Southern Pacific* a charter city may impose its own franchise fees on other utilities. General law cities are limited by the Public Utilities Code to a charge of two percent (2%) of the gross receipts from the operation of the facilities in the franchise. (Pub.Util.Code § 6006.)

IV. LIMITATIONS ON CHARTER CITIES

Of course, charter cities must comport with State law on questions of statewide importance. Charter cities may not attempt to regulate vehicular traffic control. (*Rumford v. City of Berkely* (1982) 31 Cal. 3d 545, 551-554.) In addition, public improvements of a regional nature may fall outside the context of "municipal affair". In *City of Santa Clara v. Von Raesfeld* (1970) 13 Cal. 3d 239, 246, a city manager refused to issue revenue bonds to fund the city's "sham" of a regional sewage treatment facility, without the prior voter approval required in the

city charter. The court ordered payment, noting the regional nature of the facility took the matter outside the exclusive reach of local regulation. (Id.)

Another issue which has been declared a matter of statewide concern is the rights and protections provided to peace officers pursuant to the "Public Safety Officers' Procedural Bill of Rights." *(Baggett v. Gates* (1982) 32 Cal. 3d 128, 140.) The so-called "Police Bill of Rights" affords police officers various procedural rights prior to any action which may be taken against them for disciplinary purposes. (Gov. Code, § 3300 *et seq.)*

Various statutory provisions require charter cities to conform with State policies as well. For example, charter cities must conform their zoning to provisions of their general plan, based upon the State's pervasive interest in upholding the general plan as the definitive document for development in the, jurisdiction. *(City of Los Angeles v. State of California* (1982) 138 Cal. App. 3d 526, 534-535; *City of Del Mar v. City of San Diego* (1982) 133 Cal. App. 3d 401, 414-15.) Charter cities are likewise subject to requirements for low and moderate income housing development. *(Buena Vista Gardens Apartments Association v. City of San Diego Planning Department* (1985) 175 Cal. App. 3d 289P 306-307.) Charter cities must follow the Meyers-Milias-Brown Act regarding their conduct of labor relations with public employees. *(San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal. App. 3d 553, 557.) General law cities and charter cities are equally defined as "local agencies" for restrictions on the amounts of building inspection fees and developer impact fees that may be charged under State law (Gov't Code §§ 54994, 66000(c)). General law cities and charter cities are equally defined as "local responsible for complying with the State's open meeting laws (Gov't Code § 54951).

The concept of municipal affairs has evolved over the past several decades. Historically, the courts tended to uphold activities under the municipal affairs doctrine. However, in the 1970s and 1980s, the trend was to find in favor of the state. (See *Bagley v. Gates* (1982) 32 Cal. 3d 128, 140 [doubt as to whether a matter is of sufficient statewide concern to justify intrusion into an area traditionally believed to be strictly a municipal affair "must be resolved in favor of the legislative authority of the state."]) The current trend seems to be in favor of municipal authority, however the courts have quite a bit of discretion in this area.

Lastly, there are some disadvantages of which the City should be aware. Because each charter is unique, there is no established case law to which a City Council, City Attorney, or even a court may turn for guidance in determining what a particular charter means and whether a City may act in a certain manner. As a result, disputes over provisions in a charter may lead to costly litigation. The City of Irvine has faced litigation of this type in defending its charter, for example.

V. PROCEDURES FOR ADOPTING A CHARTER

The California Constitution gives every city the right to adopt a charter. (Cal. Const. Article XI, Section 3(a).) The procedure presented by the Constitution for adoption of the charter is mandatory and prohibitory of other methods, and must be strictly followed. The provisions on adopting a charter appear in Government Code Section 34450 et seq.

Essentially, the charter can be proposed in one of two ways. The City can call a vote on the formation of a charter commission, either by majority vote of the City Council, or by presentation of voter petition signed by fifteen percent (15%) of the registered voters in the jurisdiction. (Section 34452). Alternatively, the legislative body on its own motion, can propose a charter, and submit the proposal of the adoption of the charter to the voters at a general or special election. (Section 34458). If there is an election for formation of a charter commission, the question must be passed by a majority vote (Section 34452). If consolidated with the general election, the resolution of the governing body setting the election must be transmitted to the County at least eighty-eight (88) days before the election (Elections Code § 23302). A charter commission. has two (2) years from the date of its election to complete a charter and submit it to the voters (Section 34462).

Regardless of whether the charter is drafted by the legislative body or the charter commission, the city council must cause copies of the charter to be printed in type of not less than 10-point. Prior law required a copy of the charter to be mailed to all citizens, but now such mailed notice is not mandatory (Section34456). The charter must be approved by a majority vote (Section 34459).

Once approved, three (3) copies of the complete text of the charter must be certified and authenticated by the governing body. One copy is filed with the recorder of the county, one in the archives of the city, and one transmitted to the Secretary of State. The copy transmitted to the Secretary of State must include certified copies of all publications and notices, certified copies of ballot arguments, and an abstract of the vote at the election (Section 34460). The charter

becomes effective once it is accepted and filed by the Secretary of State and published in the statutes of a charter chapter series (Section 34461). The charter may only be amended by following the same procedures for its adoption (Section 34450).

VI. CONCLUSION

There are a number of reasons why a city may wish to consider converting to a charter city form of government. Charter cities have more authority and power in tailoring their municipal codes with respect to municipal affairs, and are less subject to the whims of the Legislature.